

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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ILUMINADA ORTEGA,

Plaintiff,

-against-

ORDER
21 CV 1125 (HG) (CLP)

DIMITRI YAGUDAEV, *et al.*,

Defendants.
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POLLAK, United States Magistrate Judge:

On March 2, 2021, plaintiff Iuminada Ortega commenced this action against Champagne Room BK, Inc; Brooklyn Draft and Grill, Inc; Elite Holdings and Management, Inc; Ruben Yeghoyan; Yevgeniy Trofimchuk; and Dimitri Yagudaev, alleging violations of Title VII, the New York State Human Rights Law, and the New York City Human Rights Law. (ECF No. 1). Plaintiff's First Amended Complaint named only Champagne Room BK, Inc and Ruben Yeghoyan as defendants; the other defendants were dismissed. (ECF Nos. 21, 24, 35).

On May 3, 2023, plaintiff filed a Second Amended Complaint, adding Sarkis Avoyants ("Avoyants") as a defendant and adding claims against all defendants under the Fair Labor Standards Act and New York Labor Law. (ECF No. 57). A Third Amended Complaint was filed on June 5, 2023, curing a technical defect of the Second Amended Complaint. (ECF No. 62; see also Order dated 5/31/2023).

Defendant Avoyants failed to answer or respond to the complaint and a default was entered against him on August 23, 2023. (ECF No. 69). On December 28, 2023, a Stipulation of Dismissal was filed indicating that a settlement had been reached between plaintiff and defendants Ruben Yeghoyan and Champagne Room BK, Inc. (ECF No. 82).

On April 25, 2024, the Court held a hearing in the above-referenced case in connection with plaintiff's motion for default judgment against defendant Avoyants. Three issues were

addressed at the hearing.

First, plaintiff's counsel disclosed that there was an accidental misstatement in plaintiff's Declaration in Support of the Motion for Default Judgment Against Defendant Sarkis Avoyants (ECF No. 76-3) regarding her dates of employment, which affects the calculation of her damages under the wage and hour claims. Although there was discussion that plaintiff could simply file an amended/corrected Declaration, upon further review, it appears that the misstated dates also significantly affect the calculations as set forth in plaintiff's Memorandum of Law in Support of Her Motion for Default Judgment (ECF No. 76-1), and thus, a corrected Memorandum would also need to be filed. Accordingly, the plaintiff is encouraged to withdraw the current motion for default judgment without prejudice to renew with the corrected information.

Second, since plaintiff alleged FLSA claims against Ruben Yeghoyan and Champagne Room BK, Inc. in the operative Third Amended Complaint (ECF No. 62), the settlement with those defendants requires court approval under Cheeks v. Freeport Pancake House, 796 F.3d 199 (2d Cir. 2015). Plaintiff is directed to either (1) file a Motion for Settlement Approval under Cheeks so that the Court can determine if the settlement, to the extent that it deals with the wage claims, is fair and reasonable; or (2) indicate that the settlement was solely for the discrimination claims and seek a voluntary dismissal of the wage claims against those defendants. In either scenario, the Court will hold a Cheeks hearing to ensure fairness.

Finally, the Court noted that the trend in this Circuit following the decision in TransUnion LLC v. Ramirez, 594 U.S. 413, 426 (2021), is to require an allegation of concrete injury by plaintiffs bringing claims under New York's Wage Theft Prevention Act. See, e.g., Ramirez v. Union Constr. LLC, 674 F. Supp. 3d 42, 56 (S.D.N.Y. 2023). Accordingly, plaintiff's counsel requested time to confer with his client as to whether she wished to amend the Complaint.

For the foregoing reasons, plaintiff is directed to file a Status Report by June 10, 2024, indicating her next steps with respect to Cheeks approval and amendment of the Complaint.

SO ORDERED.

Dated: Brooklyn, New York
April 30, 2024

/s/ Cheryl L. Pollak

Cheryl L. Pollak
United States Magistrate Judge
Eastern District of New York